

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JERRY L. ANDERSON,

Petitioner,

v.

JUDY SMITH, Warden,
Oshkosh Correctional Institution,

Respondent.

ORDER

13-cv-792-wmc

State inmate Jerry L. Anderson filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a judgment of conviction entered against him in Dane County. The state has filed a response to that petition, which is currently under advisement. On January 27, 2015, the court denied Anderson's request to stay and hold this case in abeyance so that he could return to state court and present additional claims. The court denied that request because: (1) he exhausted the claims in his current petition and, thus, it was not a "mixed petition" that was subject to the stay-and-abeyance procedure found in *Rhines v. Weber*, 544 U.S. 269 (2005); (2) the statute of limitations for any new claims had expired and it was not clear that the new claims related back to the ones in Anderson's petition under Fed. R. Civ. P. 15(c) and *Mayle v. Felix*, 545 U.S. 644 (2005); (3) Anderson failed to establish that he had any state court remedies for his new claims and they would be barred by procedural default if added to his petition; (4) Anderson did not show good cause for a stay or offer any explanations for his delay in making his request and his failure to raise his new claims previously in state court; and (5) Anderson did not provide any facts in support of his claims or attempt to show they have merit.

Anderson has now filed a motion for reconsideration of that decision. Anderson's

motion is construed as one seeking to alter or amend the judgment under Fed. R. Civ. P. 59(e). To prevail on a motion under Rule 59(e), the moving party must identify an error of law that merits reconsideration of the judgment. *See Obrieht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008); *Sigsworth v. City of Aurora, Ill.*, 487 F.3d 506, 511-12 (7th Cir. 2007). After considering Anderson's motion and a brief in opposition from the respondent, the court concludes that Anderson has not shown that he is entitled to a stay in this case. Because he does not show that the court erred by denying a stay, Anderson's motion will be denied.

ORDER

IT IS ORDERED that Petitioner Jerry L. Anderson's motion for reconsideration (dkt. # 25) is DENIED.

Entered this 25th day of February, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge